

Message Text

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ACTION NEA-10

INFO OCT-01 EUR-12 ISO-00 CIAE-00 DODE-00 PM-04 H-02

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TO SECSTATE WASHDC 9481

INFO AMEMBASSY COLOMBO

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AMEMBASSY KATHMANDU

AMEMBASSY LONDON

AMEMBASSY MOSCOW

AMCONSUL BOMBAY

AMCONSUL CALCUTTA

AMCONSUL MADRAS

CINCPAC

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C O R R E C T E D C O P Y (PARA 6)

CINCPAC FOR POLAD

E.O. 11652: N/A

TAGS: PINT, IN

SUBJECT: RAJYA SABHA PASSES THE CONSTITUTION AMENDMENT BILL

REF: NEW DELHI 16056

1. PARLIAMENT'S UPPER HOUSE, THE RAJYA SABHA, APPROVED THE
CONSTITUTION AMENDMENT BILL TODAY, NOVEMBER 11, BY A VOTE OF
191 TO ZERO.;;- 2- 5#3 :ASE WITH THE LOK SABHA'S PASSAGE OF
THE BILL LAST WEEK (REFTEL, THE CPI SWALLOWED ITS OBJECTIONS
TO CERTAIN PROVISIONS OF THE BILL AND LINED UP WITH THE CON-
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GRESS ON THE FINAL VOTE. WE GATHER THAT THE FEW INDEPENDENT

AND NOMINATED MEMBERS OF THE HOUSE WHO OPPOSED THE BILL DID NOT PARTICIPATE IN THE VOTE.

2. JUDGING FROM PRESS REPORTING, THE COURSE OF THE DEBATE GENERALLY FOLLOWED THE PATTERN SET IN THE LOWER HOUSE: CONGRESS MP'S TOOK TURNS EXTOLLING THE AMENDMENTS AS A "GREAT LEAP FORWARD" IN IMPLEMENTING INDIA'S SOCIO-ECONOMIC REVOLUTION. CPI MEMBERS CRITICIZED CERTAIN CLAUSES ("ANTI-NATIONAL" ACTIVITIES, AND THE SIX-YEAR TERM FOR THE LOK SABHA, FOR EXAMPLE) AND REPEATED THEIR PET PROPOSAL THAT THE RIGHT TO PROPERTY BE ELIMINATED FROM THE FUNDAMENTAL RIGHTS. LAW MINISTER GOKHALE DEFENDED THE BILL ALONG THE STANDARD LINES AND SOUGHT TO ASSUAGE CPI FEARS THAT THE "ANTI-NATIONAL" CLAUSE WOULD BE USED AGAINST TRADE UNIONS. WE GATHER FROM PRESS REPORTS THAT THE ONLY VIGOROUS CRITICISM OF THE BILL CAME FROM KRISHNA KANT (INDEPENDENT, BUT FORMERLY CONGRESS-R) AND C.K. DAPHTARY (NOMINATED AND A FORMER ATTORNEY GENERAL). BOTH ARGUED THAT THE PRESENT PARLIAMENT DID NOT HAVE THE RIGHT TO APPROVE SUCH SWEEPING AMENDMENTS. REFERRING TO DAPHTARY'S CRITICISM OF THE SUBORDINATION OF THE FUNDAMENTAL RIGHTS TO THE DIRECTIVE PRINCIPLES, GOKHALE SAID: "FOR QUITE A LONG TIME THIS COUNTRY HAS BEEN PREVENTED FROM GOING AHEAD AND PASSING LEGISLATION REQUIRED TO MEET THE EXPECTATIONS AND ASPIRATIONS OF THE PEOPLE. THERE IS NO USE SHEDDING TEARS THAT WE HAVE IMPRISONED THE FUNDAMENTAL RIGHTS; MAYBE WE HAVE. NOW THE DIRECTIVE PRINCIPLES WILL HAVE PRIMACY OVER THE FUNDAMENTAL RIGHTS."

3. THE JUDICIARY RECEIVED ESPECIALLY SHARP CRITICISM FROM THE GOVERNMENT BENCHES. CONGRESS MP A.R. ANTULAY (WHO IS ALSO GENERAL SECRETARY OF THE AICC) ARGUED THAT THE JUDICIARY SHOULD BE MADE "RESPONSIBLE TO THE PEOPLE" AND FELT THAT A DISCIPLINARY COUNCIL SHOULD BE SET UP WHICH WOULD INVESTIGATE THE EFFICIENCY OF JUDGES AND ALSO EXAMINE CASES WHERE JUDGES HAD "IMPORTED" THEIR OWN POLITICAL PHILOSOPHY INTO THEIR DECISIONS. LAW MINISTER GOKHALE STATED THAT JUDGES HAD TRANSGRESSED THEIR LIMITS AND HAD BECOME LAW MAKERS. THE PRESENT BILL, HE ARGUED, WOULD PUT THE JUDICIARY IN ITS PROPER PLACE AS INTERPRETERS OF THE LAW AND LIMITED OFFICIAL USE

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REASSERT PARLIAMENT'S "SUPREME AND UNQUESTIONABLE RIGHT" TO MAKE LAWS. ON ANOTHER OCCASION, GOKHALE SAID THAT THE GOI WAS PLANNING TO UNDERTAKE A REVIEW AND RESTRUCTURING OF THE JUDICIAL SYSTEM WHICH, BEING BASED ON THE BRITISH MODEL AND ANGLO-SAXON JURISPRUDENCE, IS NEITHER "IN TUNE WITH OUR NATIONAL GENIUS NOR WITH THE ASPIRATIONS AND EXPECTATIONS OF OUR PEOPLE." HE STATED THAT SOME DECISIONS OF THE SUPREME COURT "WERE INFLUENCED BY CONSIDERATIONS OTHER THAN JUDICIAL" AND ADDED

THAT THE EXISTING SYSTEM OF LEGAL EDUCATION SHOULD BE THOROUGHLY REVIEWED BY THE GOVERNMENT SINCE THE BAR COUNCIL OF INDIA HAD FAILED TO DO ITS DUTY IN THIS FIELD.

4. AS IN THE LOK SABHA, MP'S FROM THE FOUR NON-COMMUNIST OPPOSITION PARTIES (CONGRESS-O, SP, BLD AND JAN SANGH) BOYCOTTED THE SESSION. THE CHAIRMAN OF THE RAJYA SABHA DID, HOWEVER, GRANT THEIR REQUEST THAT THE TIME ALLOTTED FOR THEIR INTERVENTIONS ON THE FLOOR BE GIVEN OVER TO INDEPENDENT MP KRISHNA KANT.

5. MP'S OFFERED SEVERAL AMENDMENTS TO THE CLAUSES (MOSTLY OF A TECHNICAL NATURE) BUT ALL WERE EITHER REJECTED OUT OF HAND BY GOKHALE OR VOTED DOWN IN VOICE VOTES. THE BILL THUS STANDS IN THE FORM AS PASSED BY THE LOK SABHA ON NOVEMBER 2, WHICH WAS VIRTUALLY IDENTICAL TO THE BILL AS ORIGINALLY PRESENTED ON SEPTEMBER 1. AS WE POINTED OUT IN PARA 3 OF THE REFTEL, THE ONLY SIGNIFICANT CHANGE ACCEPTED DURING THE LOK SABHA DEBATE WAS THE GOVERNMENT'S OWN PROPOSAL TO PLUG THE LAST LOOPHOLE REGARDING JUDICIAL REVIEW OF CONSTITUTIONAL AMENDMENTS. NOW, NO AMENDMENT TO THE CONSTITUTION CAN BE CHALLENGED IN ANY COURT ON ANY GROUNDS, NOT EVEN PROCEDURAL ONES.

6. COMMENT: THE BILL'S FATE IN THE RAJYA SABHA, WHERE CONGRESS HOLDS 168 OF THE 244 SEATS, WAS NEVER VERY MUCH IN DOUBT. THE BILL WILL NOW WIND ITS WAY THROUGH THE REQUISITE NUMBER OF STATE ASSEMBLIES (12) FOR THEIR APPROVAL. SOME ASSEMBLIES, SUCH AS IN U.P., ARE ALREADY IN SESSION AND WE HAVE NO DOUBT THAT THE BILL WILL SWIFTLY ARRIVE ON THE PRESIDENT'S DESK FOR HIS ASSENT. THIS MAY NOT, HOWEVER, BE THE LAST WE WILL HEAR OF AMENDMENTS TO THE CONSTITUTION: MRS. GANDHI HERSELF TOLD THE LOK SABHA ON OCTOBER 27

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THAT THE BILL WAS NOT PERFECT, BUT THAT IT WAS A MAJOR STEP IN CURING THE POLITICAL SYSTEM OF THE ILLS TO WHICH IT HAD BEEN SUBJECTED.

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